

1948

Leon Stucki v. James Ellis, W. H. Stewart, June S. Spackman, Clare Spackman, Thomas A. Tarbet and Magnus Olsen : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Stucki v. Ellis*, No. 7200 (Utah Supreme Court, 1948).
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In the Supreme Court of the State of Utah

LEON STUCKI,

Plaintiff and Respondent,

vs.

JAMES ELLIS, W. H.
STEWART, JUNE S.
SPACKMAN, CLARE
SPACKMAN, THOMAS A.
TARBET (one of the De-
fendents and the Appellant)
and MAGNUS OLSEN,
Defendent, and Appellant
Thomas A. Tarbet.

Appellant's

Brief

Appeal from the District Court of the First Judicial
District of the State of Utah, in and for the
County of Cache.

Hon. Marriner M. Morrison, Judge.

FILED

GEO. D. PRESTON

Attorney for Appellant.

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INDEX

To Cases:

Page

Antelope Shearing Corral Co. vs. Con. Wagon, 54 Utah	
355, 180 Pac 597	8
Brennecke vs. Rieman, 102 SW 2nd 874, 109 ALR 1214	5
Bunker vs. Coons (Utah) 60 Pac 549	9
Campbell vs. Largilliere Co., 256 Pac 371	5
Corn vs. Hyde, 26 NM 36, 188 Pac 1102	6
Custer vs. Block, 82 P 2d 282	5
Daniels vs. Smith, 169 Pac 267	5
DePriest vs. Ransom, 193 P 2d 191	9
Dreyfus vs. Dickason, 56 P 2d 881	6
Oklahoma State Bank vs. Van Hassel, 114 P 2d 912	6
Panagopluos vs. Manning, 69 P 2d 614	6
Rawleigh Co. vs. Groschlose, 49 P 2d 1085	6
Utah Builders' Supply vs. Gardner, 39 P 2d 327	8
Volker-Scowcroft Lumber vs. Vance, 32 Utah 74, 88	
Pac 896	8
40 C.J.S. 612	5
40 C.J.S. 613	6
65 A.L.R. 1209	5

To Points:

1. Does homestead exemption run with transfer of real property
and may it be assetred by subsequent grantees? 4
2. Facts necessary to establish who is "head of family" 4

In the Supreme Court of the State of Utah

LEON STUCKI.

Plaintiff and Respondent,

vs.

JAMES ELLIS, W. H.	}	BRIEF AND ARGU-
STEWART, JUNE S.		MENT OF APPEL-
SPACKMAN, CLARE		LANT THOMAS A.
SPACKMAN, THOMAS A.		TARBET.
TARBET (one of the De-		
fendants and the Appellant)		
and MAGNUS OLSEN,		
Defendent, and Appellant		
Thomas A. Tarbet.		

STATEMENT OF FACTS

On the 16th day of October, 1945, Clare Spackman and June S. Spackman were the owners of a small home and lot in Logan, Utah, and on that day they sold the property to the defendant James Ellis, who with his wife and family moved into occupancy thereof. Ellis and his wife had two or three small children. The

Spackmans were at all times concerned with this case, a married couple with one child (Tr. 46) and had no other property in Utah. They were residents of Utah, and the daughter and son-in law, respectively, of defendant W. H. Stewart.

The plaintiff knew that Ellis was a married man residing in Utah, upon the property in question with his family. (Tr. 30). The property in question was never worth in excess of the fair cash value of \$1500.00, which sum was the final purchase price to the Appellant. This is not denied by the reply of plaintiff, and which amount is not in controversy in this case.

Thomas A. Tarbet was the head of a family. His Father died in June, 1942, prior to his entry upon military duties in May, 1943 (Tr. 89). His Mother considered Thomas head of the family after the death of her husband. He supported her and her invalid daughter (his sister) (Tr. 84-85). While he was in the military service he supported his Mother and Sister, and upon his return from the Service he came back home and went to work and used his earnings to support the family. They had no other means of support and the Mother considered him the head of the family. (Tr. 85). The daughter had been in the American Fork School and could only do housework at home. This testimony is undisputed and in fact is not controverted even by inference. Tom, his Mother and Sister lived as a family until Tom was married on the 23rd of March, 1946, and

lived with his wife in the home of his Mother until he moved into the home which he purchased from Ellis on February 25th, 1946, on which date Ellis was occupying the property with his family. (Tr. 93). There was no break in the continuity of his being the head of a family at any time. Since Ellis had not paid in full for the property he had not received the deeds, and therefore, the deed was taken directly from the Spackmans to Tarbet (Tr. 59) and both the Spackmans and Ellis were paid in full by Tarbet, who received a deed (Cross Defs. Ex. No. 2). (Defs. Ex. "D" - Tr. 62, being the settlement to Ellis). The abstract of title was brought down to date at the time of the purchase of the property. (Deed from Spackmans dated March 1, 1964, (Tr. 67), which showed marketable title in the Spackmans, (Tr. 72, Ex. "I".)

Tarbet knew nothing of any claimed lien by plaintiff, and on March 15th, 1946, the plaintiff filed in the office of the County Recorder of Cache County, Utah, the Mechanic's Lien attached to plaintiff's complaint.

All of the parties were residents of Cache County, Utah (See allegation of residence as to the Spackman's in deed set forth in Tarbet's Amended Answer and Cross-Complaint).

ASSIGNMENT OF ERRORS

1. That the Court erred in finding in favor of the Plaintiff and Respondent, and against this Defendant and Appellant, and in entering and signing its Judge-

ment and Decree of Foreclosure of Mechanic's Lien.

2. That the Court erred in entering and making it's finding of Fact No. 7, and Conclusion of Law based thereon - No. 2.

STATEMENT OF ISSUES

1. Does a homestead exemption run with a transfer of the property, and may the exemption be asserted by the grantee to defeat a mechanic's lien which pre-dates the transfer of the property to the grantee?

ARGUMENT

The facts are simple and the issues narrowed to the only important matter to be decided—namely: even though Ellis and the Spackmans did not take any affirmative action to impress the character of a homestead on the property, may Tarbet now do so? And, was Tarbet the “head of a family”?

These will be taken up in the order stated.

Without reference to any of the decisions, the matter is set at rest by our statute—UCA 1943, 38-0-2. EFFECT OF CONVEYANCE—PROCEEDS OF SALE EXEMPT. “When a homestead is conveyed by the owner thereof such conveyance shall not subject the premises to any lien or encumbrance to which it would not be subject in the hands of the owner . . .” The remainder of the section applies to the proceeds of the sale and is not pertinent. The language is simple and can mean only one thing, i. e, if the homestead exemption

could have been asserted by Ellis or the Spackmans, then the conveyance to Tarbet would not subject the property to the lien of the Plaintiff. The rule is well stated in 40 C. J. S., p. 612. "It is a well established general rule, almost universally followed, that when a homestead is sold the exempt character of the homestead property existing at the time of the sale runs with the transfer and as far as the rights of the purchaser are concerned, no claim of judgement against the vendor can be asserted against the property which could not be enforced during the time the debtor occupied it as a residence." Note in 65 A. L. R., p. 1209.

The conveyance does not place the creditor in any better position than he was before the transfer. *Campbell vs. Largilliere Co., Bankers*, 256 P. 371, (Idaho): "If the property was exempt before the conveyance, we fail to see what rights the judgement creditor gains by the transfer. A guarantee of a homestead holds it free from a judgement which could not have been asserted against it when it remained the homestead of his grantor." The rule is so even though a transfer of the property is made for the purpose of defeating creditors. *Daniels vs. Smith*, 169 Pac. 267, (Utah), *Brennecke vs. Rieman*, 102 S. W. (2d) 874, (Mo.), 109 A. L. R. 1214. *Custer vs. Block, et al.* 82 P. 2d 282, (N. M.). "There was no evidence offered as to the value of the homestead. We cannot presume that its value exceeded the homestead exemption. We held in *Corn v. Hyde*, 26 N. M. 36, 188

P. 1102, that property exempt as a homestead could be conveyed free from a judgement lien''. Citing with approval *Brennecke vs. Rieman*, supra. *Oklahoma State Bank v. Van Hassel, et al*, 114 P. 2d 912 (Okla.), *Rawleigh Co., vs. Groschlose, et al*, 49 P. 2d 1085 (Okla.), *Dreyfus v. Dickason*, 56 P. 2d 881.

So far as the writer has been able to discover there are only two states in the U. S. holding to the contrary, namely, Louisiana and North Carolina, but even these are not necessarily contrary because of the statutory provisions of the homestead acts. See 40 C. J. S. 613, note 98. In comparing the rulings in these two States it will be noted that our Statute (38-0-2) prevents just what the rulings in Louisiana and North Carolina permit.

Certainly the equities in this case are with Tarbet, and not with Stucki.

Stucki had an opportunity to protect himself by requiring security in advance of any labor or material furnished. Tarbet had none. He did what a normal person would do even though he was young and inexperienced. He secured a warranty deed and abstract of title, and when he paid over the full purchase price he had no means of knowing that Stucki claimed a lien on the premises. The thoroughly considered case of *Panaopulos v. Manning*, 69 P. 2d 614, (Utah), holds that a homestead right is not a mere privilege, but is

an absolute right, well states the public policy in this state as follows: "it (homestead law) was an enlightened public policy, looking to the general welfare as well as to that of the individual citizen, which dictated the passage of the homestead act; and the obvious intent of the act is to secure to every householder or head of a family a home, a place of residence, which he may improve and make comfortable, and where the family may be sheltered and live beyond the reach of those financial misfortunes which even the most prudent and sagacious cannot always avoid."

There has been much eloquent language used by this Court, and all Courts of our land upon the question of public policy with relation to homestead exemption, and these are contrary to the holding of the Court below where he said: (Tr. 103-104) "As I understand the statute with respect to homestead exemptions, it doesn't mean a mechanic's lien just cannot take effect as against property that might be claimed as a homestead that the lien is enforceable until the homestead exemption is claimed, and unless that is done the lien certainly should be valid and subsisting." Then again: "I believe that this homestead exemption is an exemption which is more or less a personal one, that is one which attaches to the person or for the benefit of the persons involved—that is the family—for their protection, and that it does not attach to the property itself, but that is a right which the individual has to claim, and it isn't like a

blue block put in with a number of other blocks, all the time carrying this one particular exemption attached to that property". Of course, the Court's reasoning is just contrary to the expressions of this Higher Court. *Utah Builders' Supply Co. v. Gardner*, 39 P. 2d 327 (Utah). "... such rights are founded upon public policy *for the protection of the home and the prosperity of the state* (Italicizing mine) carrying out the policy of republics to encourage and multiply freeholders, the natural supporters and defenders of a free government . . . (quoting *Volker-Scrowcroft Lumber Co. v. Vance*, 32 Utah 74, 88 P. 896) a homestead right is for the benefit of the family, and such right cannot be frittered away even by the head of a family". So it is not a right which Ellis could have "frittered away" by not asserting it. But further than this, the mechanic's lien was void. The *Utah Builders' Supply* case (*supra*) holds just that with relation to judgements. If a judgement lien is void, so is a mechanic's lien. They are both creatures of statute and nothing more. Quoting from the *Utah Builders' Supply* case again: "It has become the settled law of this state that an execution levied upon premises constituting a homestead of a judgement debtor is absolutely void, not merely voidable. *Antelope Shearing Corral Co. vs. Cons. Wagon and Mach. Co.*, 54 Utah 355, 180 P. 597. The case also held that a judgement cannot become a lien upon the judgement creditor's homestead, that an execution or attachment levied thereon is void, and therefore an order of sale

entered by the court is equally impotent". And so is the decree ordering the foreclosure and sale of the property in this case void, and not merely voidable.

As to Assignment of Error No. 2, it is of course entirely in line with the last quotation to state, that if the lien was void, and not merely voidable, than the sale to Tarbet, could not revive the mechanic's lien. It was "stillborn", and there was nothing to revive. No reasonable mind can disagree with the premise that Tarbet was not the head of the family. The Mother considered him so; he worked at Bushnell for over \$59 per week, was the sole support of the family; allotted his pay while in the Service to his Mother; came home and went to work again. The only other contribution to her support was from the Public Welfare while he was in the Service, and after he married. The right to proceed against a homestead, claimed exempt, places the burden of proof on the one asserting the right to proceed. *De Priest vs. Ransom*, 193 P. 2d 191 (Kan.) Advance Sheet, June 11, 1948.

In reliance upon the question as to whether or not Tarbet was "head of the family" the unreversed case of *Bunker vs. Coons*, 60 P. 549 (Utah), is cited. About the only difference being is that Bunker owned title to the property consisting of the homestead of the family, and in the case at bar, the Mother of Tarbet owned the residence. The ownership of property is not determinative of the question: "Who is head of the family?"

Bunker was the son of a widow. So is Tarbet. Bunker was the sole support of the family. So was Tarbet. Bunker was absent from the homestead for a year or two as a freighter. So was Tarbet as a soldier. Bunker came back and lived with his Mother. So did Tarbet. Bunker, when he came back used the proceeds of his labor to support his Mother. So did Tarbet. Turn to page 91 of the Transcript: (After return from Military Service). O. "Where did you go from the station at which you were discharged?" "A. . . . At Home" . . . "And who was living there then? A. My Sister and my Mother. Q. Did they have any means of support so far as you could see other than what they had been receiving from the— A. No sir. Q. Now what did you do in the way of employment? A. At first I had quite a time getting a job. Well, I had saved quite a little bit while I was in the service, and we used that. About fifteen or twenty days after I got a job at the Baugh Motor. Q. And have you been employed continuously ever since then? A. Yes.

The writer does not actually believe that the lower Court well considered its finding No. 7 and Conclusion No. 2. Refer to page 85 of the Transcript and recall that Mrs. Tarbet's husband had died leaving her with a daughter who had been committed to the American Fork School, and one son who went into the Military Service. "Q. Did he go to work between the time he came home from Japan and when he got married? Did he work be-

fore he got married? . . . A. Why sure, he worked all the time. Q. What did he do with his money? A. Gave it to the house. Q. Did you have any other means of support? A. No sir. Q. Who did you feel was then the head of your family? A. He was.

In conclusion permit the writer to state that a family consists of two or more persons living together as a unit, and that when a man in his twenties has done what Tarbet has done to maintain the integrity and independence evidenced in this case, and that the policy of Utah has historically been based on a liberal interpretation of the homestead laws, and that the plaintiff and respondent had all the opportunity to protect himself, and Tarbet had none, then the decision and judgement of the lower Court should be reversed.

Respectfully Submitted,
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Received copy of within
Brief at Logan, Utah, on the
..... day of, 1948.

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